

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MERCED CITY ELEMETRY SCHOOL  
DISTRICT.

OAH Case No. 2015090062

ORDER DENYING MOTION TO  
DISMISS

On December 3, 2015, Parent filed an Amended Request for Mediation and Due Process Hearing (amended complaint), naming Merced City School District as the Respondent.

On December 15, 2015, District filed a Motion to Dismiss, claiming that issues one and two, and portions of issues three, four and six were time-barred. District's motion contends that the two-year statute of limitations of Education Code section 56505(l) bars any claims arising before December 3, 2013.

On December 21, 2015, Parent filed an opposition. On December 22, 2015, District filed a reply.

APPLICABLE LAW

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, special education law does not provide for a summary judgment procedure.

Both federal and state laws contain a two year statute of limitations for special education administrative actions. (20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2)(2006); Ed. Code, § 56505, subd. (l).) The state statute provides that a request for due process hearing arising under subdivision (a) of Section 56501 shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis of the request. However, in accordance with Section 1415(f)(3)(D) of Title 20 of the United States Code, the two year time period does not apply if the parent was prevented from requesting the hearing due to either of the following: (1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or (2) the local education agency withheld information that was required to be provided to the parent. (Ed. Code, § 56505, subd. (l).)

## DISCUSSION

Student's amended complaint alleges that District: (1) failed to timely provide Parent with Student's requested records; (2) denied Student a free appropriate public education from 2007 through 2010 by failing to meet its Child Find obligations; (3) failed to assess Student from 2007 through present in all areas of suspected disability; (4) denied Student a FAPE from 2013 through present by failing to offer Student mental health services and to conduct a mental health assessment; (5) denied Student a FAPE by excluding Parent from an IEP meeting on September 4, 2014; (6) denied Student a FAPE from 2011 through the present by failing to adjust Student's goals and program even though Student made little to no progress; and (7) failed to provide a response to the Parent's request to have Student's placement changed to a residential treatment center. The amended complaint further alleges that the District made misrepresentations to Parent about Student's academic and behavioral needs and withheld from Parent critical accurate information about Student.

District's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. A factual inquiry will be required to determine whether, and to what extent, District's alleged conduct prevented Parent from requesting the hearing due to either specific misrepresentations that District had solved the problem forming the basis of the complaint, or withheld information that was required to be provided to the Parent.

District's motion to dismiss portions of Student's amended complaint is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: December 29, 2015

/s/

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CHRISTINE ARDEN  
Administrative Law Judge  
Office of Administrative Hearings